

**Introduced by Senator Leno**

February 22, 2013

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An act to amend Section 11350 of the Health and Safety Code, relating to controlled substances.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 649, as introduced, Leno. Possession of controlled substances: penalties.

Existing law provides that the unlawful possession of certain controlled substances, including, among others, opiates, opium, opium derivatives, mescaline, peyote, tetrahydrocannabinols, and cocaine base, is a felony punishable by imprisonment in a county jail for 16 months, or 2 or 3 years. Existing law imposes, as a condition of probation for a felony conviction of these provisions, a fine of \$1,000 or community supervision for a first offense, and a fine of \$2,000 or community supervision for a second or subsequent offense.

This bill would make the unlawful possession of any of those substances punishable as either a felony punishable in county jail or by imprisonment in a county jail for not more than one year. The bill would also delete the required probation conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11350 of the Health and Safety Code is
- 2 amended to read:
- 3 11350. (a) Except as otherwise provided in this division, every
- 4 person who possesses (1) any controlled substance specified in

1 subdivision (b) or (c) *of*, or paragraph (1) of subdivision (f) of,  
2 Section 11054, specified in paragraph (14), (15), or (20) of  
3 subdivision (d) of Section 11054, or specified in subdivision (b)  
4 or (c) of Section 11055, or specified in subdivision (h) of Section  
5 11056, or (2) any controlled substance classified in Schedule III,  
6 IV, or V which is a narcotic drug, unless upon the written  
7 prescription of a physician, dentist, podiatrist, or veterinarian  
8 licensed to practice in this state, shall be punished by imprisonment  
9 *in a county jail for a period of not more than one year or pursuant*  
10 *to subdivision (h) of Section 1170 of the Penal Code.*

11 (b) Except as otherwise provided in this division, every person  
12 who possesses any controlled substance specified in subdivision  
13 (e) of Section 11054 shall be punished by imprisonment in a county  
14 jail for not more than one year or pursuant to subdivision (h) of  
15 Section 1170 of the Penal Code.

16 (c) Except as otherwise provided in this division, whenever a  
17 person who possesses any of the controlled substances specified  
18 in subdivision (a) or (b), the judge may, in addition to any  
19 punishment provided for pursuant to subdivision (a) or (b), assess  
20 against that person a fine not to exceed seventy dollars (\$70) with  
21 proceeds of this fine to be used in accordance with Section 1463.23  
22 of the Penal Code. The court shall, however, take into consideration  
23 the defendant's ability to pay, and no defendant shall be denied  
24 probation because of his or her inability to pay the fine permitted  
25 under this subdivision.

26 ~~(d) Except in unusual cases in which it would not serve the~~  
27 ~~interest of justice to do so, whenever a court grants probation~~  
28 ~~pursuant to a felony conviction under this section, in addition to~~  
29 ~~any other conditions of probation which may be imposed, the~~  
30 ~~following conditions of probation shall be ordered:~~

31 ~~(1) For a first offense under this section, a fine of at least one~~  
32 ~~thousand dollars (\$1,000) or community service.~~

33 ~~(2) For a second or subsequent offense under this section, a~~  
34 ~~fine of at least two thousand dollars (\$2,000) or community service.~~

35 ~~(3) If a defendant does not have the ability to pay the minimum~~  
36 ~~finer specified in paragraphs (1) and (2), community service shall~~  
37 ~~be ordered in lieu of the fine.~~